S.B. Civil Revision Petition No.117/06

Mohra & Ors. Vs. Sugarmal

Date of Order : 11/08/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. R.K. Mathur, for petitioners

Instant revision petition has been filed by the petitioner-defendants against the order dated 3rd June, 2006 whereby their objections filed before the Executing Court were rejected.

Facts give rise to the present revision petition are that a suit came to be instituted for recovery of money by the respondent-plaintiffs (degree holder) against the petitioner-defendants in which it was inter alia prayed that father of the defendants took loan of Rs.5500/- from the respondent-plaintiffs for his shop at the interest rate of Rs.1/- per month and in lieu of that a promissory note was executed. The present petitioners filed their written statement and raised objection with regard to claim for recovery of money prayed for by the respondent-plaintiffs. After taking their objections, a specific issue No.2 was framed:

> “Whether defendants are in possession of Makhan Lal's property and have received it from deceased debtor and are liable to satisfy the debt?”

The issue no.2 was decided against the petitioner-defendants and the decree was passed in favour of respondent-plaintiffs vide judgment and decree dated 27th September, 2001 which was also affirmed by the Appellate Court vide judgment dated 19th September, 2003. After the decree attained finality, the respondent-plaintiffs filed application for execution and the petitioner-defendants filed their objection under u/s.47 CPC and

submitted that they are in independent possession of the property in question and no recovery can be made in execution of the decree passed in favour of respondent-plaintiffs from them.

Learned Executing Court taking their objections into consideration recorded a finding that so far as the objection with respect to their liability to satisfy the decree is concerned, a specific issue was framed and was decided against them which cannot now be permitted to re-agitate in execution proceedings by the petitioner-defendants under their application filed u/s.47 CPC.

Counsel for petitioners submits that when the appeal was filed certain documents were placed on record to satisfy that they were in independent right of the property in question by filing under O.41 R.27 CPC and it was observed at the appellate stage that it can be considered during the execution proceedings. In such circumstances, only remedy available with the present petitioners is to raise this objection only by filing application.

I have considered the submission of the counsel and perused the order impugned.

The very objection which the petitioners raised by submitting application u/s.47 CPC was almost in same terms which was considered by the learned trial Judge in relation to issue no.2 and after its due adjudication the same was decided against the present petitioner-defendants which, in my opinion, could not have been permitted for the petitioners to raise and re-agitate the same by filing application u/s.47 CPC.

I do not find any error committed by the learned Executing Court in passing of order impugned dated 3rd June, 2006.

Consequently, the revision petition fails and is hereby dismissed.

[Ajay Rastogi],J.

FRB